

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS STEWART MURDOCK,

Defendant-Appellant.

UNPUBLISHED

October 20, 2015

No. 322001

Alger Circuit Court

LC No. 2011-001962-FC

Before: BOONSTRA, P.J., and SAAD and HOEKSTRA, JJ.

PER CURIAM.

This case returns to this Court following the second of two ordered resentencing hearings.¹ A jury found defendant guilty of operating a motor vehicle while intoxicated (OWI) causing death, MCL 257.625(4)(a), OWI third offense (OWI 3d), MCL 257.625(1), (9)(c), possession of marijuana, MCL 333.7403(2)(d), and operating a motor vehicle with a suspended license second offense, MCL 257.904(3)(a).² In his latest resentencing, defendant was sentenced within the sentencing guidelines range to 54 months to 15 years of imprisonment for the OWI causing death conviction, 11 months for the OWI 3d conviction, and 85 days for both the possession of marijuana and the operating a motor vehicle without a license convictions. We affirm.

Defendant's sole argument on appeal is that the trial court erred by failing to find any substantial and compelling reasons to depart downward from the sentencing guidelines. At the outset, we note that our Supreme Court recently struck down MCL 769.34(3), which required a court to articulate a "substantial and compelling" reason for it to impose a sentence that departs from the guidelines range. *People v Lockridge*, ___ Mich ___, ___ NW2d ___ (Docket No. 149073, decided July 29, 2015), slip op, p 29. That is because, for Sixth Amendment considerations that are not relevant for the issue on appeal, the sentencing guidelines are now

¹ See *People v Murdock*, unpublished opinion per curiam of the Court of Appeals, issued October 10, 2013 (Docket No. 312595); *People v Murdock*, unpublished order of the Court of Appeals, entered March 11, 2014 (Docket No. 320312).

² Defendant was acquitted of involuntary manslaughter, MCL 750.321.

deemed advisory instead of mandatory. *Id.* at ____ (slip op at 28). But because the guidelines are “highly relevant,” a court must still consult the guidelines and take them into account when sentencing. *Id.* at ____ (slip op at 28), citing *United States v Booker*, 543 US 220, 264; 125 S Ct 738; 160 L Ed 2d 621 (2005).

However, *Lockridge* did nothing to alter or diminish MCL 769.34(10), which provides that “[i]f a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant’s sentence.” In this case, defendant does not dispute that his sentence was within the appropriate range prescribed by the guidelines, and he does not assert that the court relied on inaccurate information or that there was an error in scoring the guidelines. Thus, MCL 769.34(10) prohibits this Court from remanding the case for resentencing and instead compels us to affirm the sentence. *People v Kimble*, 470 Mich 305, 310-311; 684 NW2d 669 (2004).

Moreover, defendant’s argument that resentencing is required because the court did not address each purported substantial and compelling factor is not persuasive. Resentencing is not required when “a sentencing judge fails to address on the record each factor articulated by a defendant as constituting a . . . reason for departure.” *People v Michielutti*, 474 Mich 889; 704 NW2d 705 (2005), citing MCL 769.34(10).

Affirmed.

/s/ Mark T. Boonstra
/s/ Henry William Saad
/s/ Joel P. Hoekstra